

determination of the Tribunal by adoption of a resolution expressing disapproval of such determination. Judicial review of determinations of the Royalty Tribunal under the Senate bill is permitted only where: (1) The determination was procured by corruption, fraud, or undue means; (2) there was evident partiality or corruption in any of the members of the Tribunal; or (3) any member of the Tribunal was guilty of any misconduct by which the rights of any party were prejudiced.

The Committee concluded that determinations of the Copyright Royalty Commission were not appropriate subjects for regular review by Congress and that the provisions of the Senate bill providing for judicial review were far too restrictive. Therefore, it amended the Senate bill to eliminate automatic Congressional review and to broaden the scope of judicial review. The amended bill provides for the full scope of judicial review provided by Chapter 7 of the Administrative Procedure Act [5 U.S.C. 701 et seq.]. Congressional review of the activities of the Copyright Royalty Commission will occur as part of the oversight functions of the Judiciary Committees of the House of Representatives and the Senate. The oversight process will provide the Congress sufficient information to determine whether statutory changes are needed at some time in the future.

The expanded judicial review provided in the Committee amendment will permit much more detailed, thoughtful, and careful review of possibly arbitrary or capricious determinations of the Commission than can be provided by Congressional review.

AMENDMENTS

1993—Pub. L. 103-198, §2(f), Dec. 17, 1993, 107 Stat. 2308, amended table of sections generally, substituting chapter heading and items 801 to 803 for chapter heading “COPYRIGHT ROYALTY TRIBUNAL”, item 801 “Copyright Royalty Tribunal: Establishment and purpose”, item 802 “Membership of the Tribunal”, item 804 “Institution and conclusion of proceedings”, item 805 “Staff of the Tribunal”, item 806 “Administrative support of the Tribunal”, item 807 “Deduction of costs of proceedings”, item 808 “Reports”, item 809 “Effective date of final determinations”, and item 810 “Judicial review”.

Pub. L. 103-198, §2(c), Dec. 17, 1993, 107 Stat. 2307, struck out item 803 “Procedures of the Tribunal.”

EFFECTIVE DATE

Chapter effective Oct. 19, 1976, see section 102 of Pub. L. 94-533, set out as a note preceding section 101 of this title.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 111, 115, 118, 119, 912 of this title.

§ 801. Copyright arbitration royalty panels: Establishment and purpose

(a) **ESTABLISHMENT.**—The Librarian of Congress, upon the recommendation of the Register of Copyrights, is authorized to appoint and convene copyright arbitration royalty panels.

(b) **PURPOSES.**—Subject to the provisions of this chapter, the purposes of the copyright arbitration royalty panels shall be—

(1) to make determinations concerning the adjustment of reasonable copyright royalty rates as provided in sections 115 and 116, and to make determinations as to reasonable terms and rates of royalty payments as provided in section 118. The rates applicable under sections 115 and 116 shall be calculated to achieve the following objectives:

(A) To maximize the availability of creative works to the public;

(B) To afford the copyright owner a fair return for his creative work and the copyright user a fair income under existing economic conditions;

(C) To reflect the relative roles of the copyright owner and the copyright user in the product made available to the public with respect to relative creative contribution, technological contribution, capital investment, cost, risk, and contribution to the opening of new markets for creative expression and media for their communication;

(D) To minimize any disruptive impact on the structure of the industries involved and on generally prevailing industry practices.

(2) to make determinations concerning the adjustment of the copyright royalty rates in section 111 solely in accordance with the following provisions:

(A) The rates established by section 111(d)(1)(B) may be adjusted to reflect (i) national monetary inflation or deflation or (ii) changes in the average rates charged cable subscribers for the basic service of providing secondary transmissions to maintain the real constant dollar level of the royalty fee per subscriber which existed as of the date of enactment of this Act: *Provided*, That if the average rates charged cable system subscribers for the basic service of providing secondary transmissions are changed so that the average rates exceed national monetary inflation, no change in the rates established by section 111(d)(1)(B) shall be permitted: *And provided further*, That no increase in the royalty fee shall be permitted based on any reduction in the average number of distant signal equivalents per subscriber. The copyright arbitration royalty panels may consider all factors relating to the maintenance of such level of payments including, as an extenuating factor, whether the cable industry has been restrained by subscriber rate regulating authorities from increasing the rates for the basic service of providing secondary transmissions.

(B) In the event that the rules and regulations of the Federal Communications Commission are amended at any time after April 15, 1976, to permit the carriage by cable systems of additional television broadcast signals beyond the local service area of the primary transmitters of such signals, the royalty rates established by section 111(d)(1)(B) may be adjusted to insure that the rates for the additional distant signal equivalents resulting from such carriage are reasonable in the light of the changes effected by the amendment to such rules and regulations. In determining the reasonableness of rates proposed following an amendment of Federal Communications Commission rules and regulations, the copyright arbitration royalty panels shall consider, among other factors, the economic impact on copyright owners and users: *Provided*, That no adjustment in royalty rates shall be made under this subclause with respect to any distant signal equivalent or fraction thereof represented by (i) carriage of any signal permitted under the rules and regulations of the Federal

Communications Commission in effect on April 15, 1976, or the carriage of a signal of the same type (that is, independent, network, or noncommercial educational) substituted for such permitted signal, or (ii) a television broadcast signal first carried after April 15, 1976, pursuant to an individual waiver of the rules and regulations of the Federal Communications Commission, as such rules and regulations were in effect on April 15, 1976.

(C) In the event of any change in the rules and regulations of the Federal Communications Commission with respect to syndicated and sports program exclusivity after April 15, 1976, the rates established by section 111(d)(1)(B) may be adjusted to assure that such rates are reasonable in light of the changes to such rules and regulations, but any such adjustment shall apply only to the affected television broadcast signals carried on those systems affected by the change.

(D) The gross receipts limitations established by section 111(d)(1)(C) and (D) shall be adjusted to reflect national monetary inflation or deflation or changes in the average rates charged cable system subscribers for the basic service of providing secondary transmissions to maintain the real constant dollar value of the exemption provided by such section; and the royalty rate specified therein shall not be subject to adjustment; and

(3) to distribute royalty fees deposited with the Register of Copyrights under sections 111, 116, 119(b), and 1003, and to determine, in cases where controversy exists, the distribution of such fees.

(c) **RULINGS.**—The Librarian of Congress, upon the recommendation of the Register of Copyrights, may, before a copyright arbitration royalty panel is convened, make any necessary procedural or evidentiary rulings that would apply to the proceedings conducted by such panel.

(d) **ADMINISTRATIVE SUPPORT OF COPYRIGHT ARBITRATION ROYALTY PANELS.**—The Library of Congress, upon the recommendation of the Register of Copyrights, shall provide the copyright arbitration royalty panels with the necessary administrative services related to proceedings under this chapter.

(Pub. L. 94-553, title I, § 101, Oct. 19, 1976, 90 Stat. 2594; Pub. L. 99-397, § 2(c), (d), Aug. 27, 1986, 100 Stat. 848; Pub. L. 100-568, § 11(1), Oct. 31, 1988, 102 Stat. 2860; Pub. L. 100-667, title II, § 202(4), Nov. 16, 1988, 102 Stat. 3958; Pub. L. 101-318, § 3(b), July 3, 1990, 104 Stat. 288; Pub. L. 102-563, § 3(a)(1), Oct. 28, 1992, 106 Stat. 4247; Pub. L. 103-198, § 2(a), Dec. 17, 1993, 107 Stat. 2304.)

REFERENCES IN TEXT

The date of enactment of this Act, referred to in subsec. (b)(2)(A), is Oct. 19, 1976.

AMENDMENTS

1993—Pub. L. 103-198, § 2(a)(1), amended section catchline generally. Prior to amendment, catchline read as follows: “Copyright Royalty Tribunal: Establishment and purpose”.

Subsec. (a). Pub. L. 103-198, § 2(a)(2), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as

follows: “There is hereby created an independent Copyright Royalty Tribunal in the legislative branch.”

Subsec. (b). Pub. L. 103-198, § 2(a)(3)(A), (B), inserted heading and substituted “copyright arbitration royalty panels” for “Tribunal” in introductory provisions.

Subsec. (b)(2)(A), (B). Pub. L. 103-198, § 2(a)(3)(C)(i), (ii), substituted “copyright arbitration royalty panels” for “Commission” in subpar. (A) and for “Copyright Royalty Tribunal” in subpar. (B).

Subsec. (b)(2)(D). Pub. L. 103-198, § 2(a)(3)(C)(iii), inserted “and” after semicolon.

Subsec. (b)(3). Pub. L. 103-198, § 2(a)(3)(D), substituted “119(b), and 1003,” for “and 119(b),” and struck out at end “In determining whether a return to a copyright owner under section 116 is fair, appropriate weight shall be given to—

“(i) the rates previously determined by the Tribunal to provide a fair return to the copyright owner, and

“(ii) the rates contained in any license negotiated pursuant to section 116A of this title; and”.

Subsec. (b)(4). Pub. L. 103-198, § 2(a)(3)(E), struck out par. (4) which read as follows: “to distribute royalty payments deposited with the Register of Copyrights under section 1003, to determine the distribution of such payments, and to carry out its other responsibilities under chapter 10”.

Subsec. (c). Pub. L. 103-198, § 2(a)(4), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: “As soon as possible after the date of enactment of this Act, and no later than six months following such date, the President shall publish a notice announcing the initial appointments provided in section 802, and shall designate an order of seniority among the initially-appointed commissioners for purposes of section 802(b).”

Subsec. (d). Pub. L. 103-198, § 2(a)(5), added subsec. (d). 1992—Subsec. (b)(4). Pub. L. 102-563 added par. (4).

1990—Subsec. (b)(2)(D). Pub. L. 101-318 substituted “111(d)(1)(C) and (D)” for “111(d)(2)(C) and (D)”.

1988—Subsec. (b). Pub. L. 100-568 inserted concluding provisions relating to determination of fairness of a return to a copyright owner under section 116.

Subsec. (b)(3). Pub. L. 100-667 substituted “, 116, and 119(b)” for “and 116”.

1986—Subsec. (b)(2)(A) to (C). Pub. L. 99-397, § 2(c), substituted “section 111(d)(1)(B)” for “section 111(d)(2)(B)”.

Subsec. (d)(2)(D). Pub. L. 99-397, § 2(d), which directed the amendment of subsec. (d)(2)(D) by substituting “section 111(d)(1)(C) and (D)” for “section 111(d)(2)(C) and (D)”, could not be executed because section did not contain a subsec. (d). See 1990 Amendment note above.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 7 of Pub. L. 103-198 provided that:

“(a) **IN GENERAL.**—This Act [see Short Title of 1993 Amendment note set out under section 101 of this title] and the amendments made by this Act shall take effect on the date of the enactment of this Act [Dec. 17, 1993].

“(b) **EFFECTIVENESS OF EXISTING RATES AND DISTRIBUTIONS.**—All royalty rates and all determinations with respect to the proportionate division of compulsory license fees among copyright claimants, whether made by the Copyright Royalty Tribunal, or by voluntary agreement, before the effective date set forth in subsection (a) shall remain in effect until modified by voluntary agreement or pursuant to the amendments made by this Act.

“(c) **TRANSFER OF APPROPRIATIONS.**—All unexpended balances of appropriations made to the Copyright Royalty Tribunal, as of the effective date of this Act, are transferred on such effective date to the Copyright Office for use by the Copyright Office for the purposes for which such appropriations were made.”

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-318 effective Aug. 27, 1986, see section 3(e)(1) of Pub. L. 101-318, set out as a note under section 111 of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100-667 effective Jan. 1, 1989, see section 206 of Pub. L. 100-667, set out as an Effective Date note under section 119 of this title.

Amendment by Pub. L. 100-568 effective Mar. 1, 1989, with any cause of action arising under this title before such date being governed by provisions in effect when cause of action arose, see section 13 of Pub. L. 100-568, set out as a note under section 101 of this title.

FEDERAL RULES OF CIVIL PROCEDURE

Proof of official record, see rule 44, Title 28, Appendix, Judiciary and Judicial Procedure.

FEDERAL RULES OF EVIDENCE

Hearsay exception, public records and reports, see rule 803, Title 28, Appendix, Judiciary and Judicial Procedure.

Self-authentication, domestic public documents under seal, see rule 902.

CROSS REFERENCES

Authenticated copies of records and papers of department or agency admissible, see section 1733 of Title 28, Judiciary and Judicial Procedure.

Patents for designs, see section 171 et seq. of Title 35, Patents.

Trade-marks registrable on principal register, see section 1052 of Title 15, Commerce and Trade.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 104A, 802, 803 of this title; title 47 section 545.

§ 802. Membership and proceedings of copyright arbitration royalty panels

(a) COMPOSITION OF COPYRIGHT ARBITRATION ROYALTY PANELS.—A copyright arbitration royalty panel shall consist of 3 arbitrators selected by the Librarian of Congress pursuant to subsection (b).

(b) SELECTION OF ARBITRATION PANEL.—Not later than 10 days after publication of a notice in the Federal Register initiating an arbitration proceeding under section 803, and in accordance with procedures specified by the Register of Copyrights, the Librarian of Congress shall, upon the recommendation of the Register of Copyrights, select 2 arbitrators from lists provided by professional arbitration associations. Qualifications of the arbitrators shall include experience in conducting arbitration proceedings and facilitating the resolution and settlement of disputes, and any qualifications which the Librarian of Congress, upon the recommendation of the Register of Copyrights, shall adopt by regulation. The 2 arbitrators so selected shall, within 10 days after their selection, choose a third arbitrator from the same lists, who shall serve as the chairperson of the arbitrators. If such 2 arbitrators fail to agree upon the selection of a third arbitrator, the Librarian of Congress shall promptly select the third arbitrator. The Librarian of Congress, upon the recommendation of the Register of Copyrights, shall adopt regulations regarding standards of conduct which shall govern arbitrators and the proceedings under this chapter.

(c) ARBITRATION PROCEEDINGS.—Copyright arbitration royalty panels shall conduct arbitration proceedings, subject to subchapter II of chapter 5 of title 5, for the purpose of making their determinations in carrying out the pur-

poses set forth in section 801. The arbitration panels shall act on the basis of a fully documented written record, prior decisions of the Copyright Royalty Tribunal, prior copyright arbitration panel determinations, and rulings by the Librarian of Congress under section 801(c). Any copyright owner who claims to be entitled to royalties under section 111, 116, or 119, or any interested copyright party who claims to be entitled to royalties under section 1006, may submit relevant information and proposals to the arbitration panels in proceedings applicable to such copyright owner or interested copyright party, and any other person participating in arbitration proceedings may submit such relevant information and proposals to the arbitration panel conducting the proceedings. In rate-making proceedings, the parties to the proceedings shall bear the entire cost thereof in such manner and proportion as the arbitration panels shall direct. In distribution proceedings, the parties shall bear the cost in direct proportion to their share of the distribution.

(d) PROCEDURES.—Effective on the date of the enactment of the Copyright Royalty Tribunal Reform Act of 1993, the Librarian of Congress shall adopt the rules and regulations set forth in chapter 3 of title 37 of the Code of Federal Regulations to govern proceedings under this chapter. Such rules and regulations shall remain in effect unless and until the Librarian, upon the recommendation of the Register of Copyrights, adopts supplemental or superseding regulations under subchapter II of chapter 5 of title 5.

(e) REPORT TO THE LIBRARIAN OF CONGRESS.—Not later than 180 days after publication of the notice in the Federal Register initiating an arbitration proceeding, the copyright arbitration royalty panel conducting the proceeding shall report to the Librarian of Congress its determination concerning the royalty fee or distribution of royalty fees, as the case may be. Such report shall be accompanied by the written record, and shall set forth the facts that the arbitration panel found relevant to its determination.

(f) ACTION BY LIBRARIAN OF CONGRESS.—Within 60 days after receiving the report of a copyright arbitration royalty panel under subsection (e), the Librarian of Congress, upon the recommendation of the Register of Copyrights, shall adopt or reject the determination of the arbitration panel. The Librarian shall adopt the determination of the arbitration panel unless the Librarian finds that the determination is arbitrary or contrary to the applicable provisions of this title. If the Librarian rejects the determination of the arbitration panel, the Librarian shall, before the end of that 60-day period, and after full examination of the record created in the arbitration proceeding, issue an order setting the royalty fee or distribution of fees, as the case may be. The Librarian shall cause to be published in the Federal Register the determination of the arbitration panel, and the decision of the Librarian (including an order issued under the preceding sentence). The Librarian shall also publicize such determination and decision in such other manner as the Librarian considers appropriate. The Librarian shall also make the report of the arbitration panel and the accompanying record available for public inspection and copying.